

March 6, 1987

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
BRIAN POPE v. CITY OF SAN DIEGO
San Diego Superior Court Case No. 514240

After a three-week trial, the jury awarded plaintiff, a quadriplegic, \$17,330.53. The jury's special verdict found Old Mission Dam to be a dangerous condition of public property which caused plaintiff's damages, found the total amount of damages to be in the sum of \$1,733,053.00 and found plaintiff to be 99% negligent, reducing the damage award to \$17,330.53.

On May 22, 1983, Brian Pope, age 24, dove from the dam at Old Mission Dam Park and suffered an incomplete severance of his spinal cord rendering him a quadriplegic. Old Mission Dam is a national historical monument owned and maintained by the City of San Diego. The City acquired the dam from the United States Government in 1964. Signs are posted outside the park advising motorists of the park's location. A parking lot, benches, picnic tables, and garbage cans had been located in the park. The City dredged the river behind the dam in 1971 and 1972 and removed fallen trees which rested on the dam in 1982. Although the municipal code prohibits swimming in the San Diego River, no signs were posted prohibiting swimming and diving. The only signs posted prohibited the use of glass containers. A child had drowned 1/2 mile downstream from the dam in July of 1982.

When plaintiff and a friend arrived at the dam, about thirty (30) people were at the park. Some children were swimming and diving into the pool of water next to the dam. Plaintiff walked into the water and checked the depth where the other swimmers were jumping and diving. The water depth was about up to the plaintiff's armpits. Plaintiff climbed onto the dam and jumped or dove off about 10-15 times. On his last dive, plaintiff struck the bottom or an obstruction, fracturing his spinal column. Plaintiff's companion, Christian, testified that before plaintiff's accident he too had dived off the dam and scraped the bottom. Christian testified that as he was emerging from the

water he told plaintiff not to dive. However, he was not facing plaintiff and plaintiff denied hearing any warning. At the hospital after the accident, plaintiff's blood-alcohol level was .16.

Plaintiff incurred medical expenses of about \$150,000.00.

Plaintiff cannot use his left leg and left arm. Because his spinal cord injury was an incomplete severance, he can use his right arm and hand with a limited range of motion. He has very limited use of his right leg. Plaintiff has no control over his functions. He cannot get out of bed without assistance. The cost of future attendant and medical care was placed at \$1,200,000.00. Plaintiff's wage lost was projected at \$500,000.00.

THE LITIGATION

The trial began on January 15, 1987. Because the judgment of \$17,330.53 is less than the City's offer to settle the case, the City is entitled to recover deposition costs in the sum of \$3,500.00 and may, in the discretion of the trial judge, be awarded expert witnesses expenses in the sum of \$30,000.00. Plaintiff has made a motion for a new trial which is scheduled for March 9, 1987.

The trial attorney was Deputy City Attorney Kenneth So.

Respectfully submitted,

JOHN W. WITT

City Attorney

KS:jt:Lit.(x043.1)

RC-87-9